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Lawry, Eileen
0291

USA-S-1829-790

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CHESAPEAKE BAY
CRITICAL AREA COMMISSION

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2000-0291-V

IN RE: EILEEN LAWRY

SEVENTH ASSESSMENT DISTRICT

DATE HEARD: SEPTEMBER 12, 2000

ORDERED BY: STEPHEN M. LeGENDRE, ADMINISTRATIVE HEARING OFFICER

ZONING ANALYST: KEVIN DOOLEY

DATE FILED: SEPTEMBER 14, 2000

PLEADINGS

Eileen Lawry, the applicant, seeks a variance (2000-0291-V) to permit a dwelling addition with less setbacks and buffer than required on property located along the south side of Jordan Drive, east of Bonnie Wood Drive, Shady Side.

PUBLIC NOTIFICATION

The case was advertised in accordance with the County Code. The file contains the certification of mailing to community associations and interested persons. Each person designated in the application as owning land that is located within 175' of the property was notified by mail, sent to the address furnished with the application. Ms. Lawry testified that the property was posted for more than 14 days prior to the hearing. I find and conclude that the requirements of public notice have been satisfied.

FINDINGS AND CONCLUSIONS

The applicant owns a single-family residence located at 1327 Jordan Drive, in the subdivision of Avalon Shores, Shady Side. The property comprises 24,149 square feet and is split zoned R-5 residential and OS Open Space with Chesapeake Bay Critical Area designations as Limited Development Area (LDA) and Resource Conservation Area (RCA). This is a waterfront site on South Creek. The applicant proposes to construct a waterfront dwelling addition (bedroom, great room and porch) within 30 feet of tidal wetlands.

The Anne Arundel County Code, Article 28, Section 1A-104(a)(1) requires a minimum 100-foot buffer landward from tidal wetlands. Accordingly, the proposal necessitates a buffer variance in the amount of 70 feet.

Kevin Dooley, a zoning analyst with the Office of Planning and Zoning, testified that the property is located in an older subdivision. More than half the site is wetlands, with the balance almost wholly within the buffer to wetlands. Under a strict application of the Critical Area criteria, there could be no expansion of the dwelling. A further complicating factor is the location of the water well in the front yard. There is simply no opportunity to expand the dwelling toward the road while maintaining the required 30-foot setback from the well. Finally, the witness observed that the existing dwelling as well as the proposed addition are comparatively compact. By way of conclusion, he supported the application, subject to mitigation with native vegetation at a 3:1 ratio based on the area of new disturbance, with the plantings maximized between the addition and the shoreline.

Perry Lawry testified that the addition will add 860 square feet to the footprint of the dwelling. No trees will be removed.

Upon review of the facts and circumstance, I find and conclude that the applicant is entitled to relief from the code. For this Critical Area property, the extent of the tidal wetlands and the location of the well constitute unique physical conditions, such that a strict implementation of the program results in an unwarranted hardship. To literally interpret the program will deprive the applicant of the right to expand the dwelling, a right commonly enjoyed by other properties

in similar areas within the Critical Area. Conversely, the granting of the variance will not confer any special privilege that the program typically denies to other lands. There was nothing to suggest that the request is based on circumstances resultant of actions by the applicant; nor does it arise from land use on neighboring property. Finally, with mitigation, the granting of the variance will not adversely affect Critical Area resources and will harmonize with the general spirit and intent of the program.

I further find that the variance is the minimum necessary to afford relief. As noted, this is a modest addition to a small dwelling. There was nothing to suggest that the granting of the variance will alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property, or be detrimental to the public welfare. The approval is subject to the condition in the Order.

ORDER

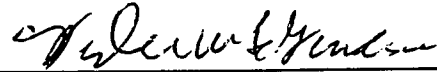
PURSUANT to the application of Eileen Lawry, petitioning for a variance to permit a dwelling addition with less setbacks and buffer than required; and

PURSUANT to the advertising, posting of the property, and public hearing and in accordance with the provisions of law, it is this 14 day of September, 2000,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicant is hereby **granted** a tidal wetlands buffer in the amount

of 70 feet to permit a dwelling addition in accordance with the site plan.

The foregoing variance is subject to the condition that the applicant shall provide mitigation at a 3:1 ratio based on the footprint of the addition, with the plantings maximized between the addition and the shoreline.



Stephen M. LeGendre
Administrative Hearing Officer

NOTICE TO APPLICANT

Within thirty (30) days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals.

Further, Section 11-102.2 of the Anne Arundel County Code states:

A variance granted under the provisions of this Article shall become void unless a building permit conforming to the plans for which the variance was granted is obtained within one year of the grant and construction is completed within two years of the grant.

If this case is not appealed, exhibits must be claimed within 60 days of the date of this order, otherwise they will be discarded.

Judge John C. North, II
Chairman



Ren Serey
Executive Director

**STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION**

1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338

August 21, 2000

Mr. Kevin Dooley
Anne Arundel County Department of Planning and Code Enforcement
2664 Riva Road, MS 6301
Annapolis, MD 21401

RE: Variance 2000-0291-V, Eileen Lawry

Dear Mr. Dooley:

Thank you for providing information on the above referenced variance application. The applicant is requesting a variance to permit a dwelling addition with less setbacks and Buffer than required. The property has a split designation of LDA and RCA and is currently developed with a house, shed and driveway.

It appears that the Buffer has been expanded for hydric soils to encompass the entire site. The addition is a minimum of 105 feet from the tidal wetlands and 54 feet from the non-tidal wetlands. The proposed addition is significant in size. While this office often does not oppose additions which provide a reasonable expansion of living space, we recommend that, if possible, some or all of the addition be built no closer to the water than currently exists. If approved, we recommend mitigation at a 3:1 ratio for all new disturbance in the Buffer.

Thank you for the opportunity to comment. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case.

Sincerely,

A handwritten signature in cursive script that reads "LeeAnne Chandler".

LeeAnne Chandler
Natural Resources Planner

cc: AA397-00

Branch Office: 31 Creamery Lane, Easton, MD 21601
(410) 822-9047 Fax: (410) 820-5093

